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In the Supreme Court of the United States

OCTOBER TERM, 1975

TRICE EUGENE MORRILL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
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Department of Justice,
Washington, D.C. 20530.

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Petitioner contends that the trial court erred in limiting his recross-examination of a government witness and that there was insufficient evidence to support his conviction.

Following a jury trial in the United States District Court for the Northern District of Indiana, petitioner was convicted of possessing property stolen from interstate commerce, in violation of 18 U.S.C. 659.[1] Petitioner was fined $2,000 and sentenced to a term of seven years' imprisonment, to be followed by three years' probation. The court of appeals affirmed (Pet. App. 18-24).

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[1]The jury also found petitioner guilty of receiving and concealing that property, in violation of 18 U.S.C. 2315, but judgment on that charge was withheld by the court.

On January 12, 1974, three trailer loads of television sets were stolen from a railroad yard in Chicago while en route from Virginia (Tr. 194-198). On January 29, 1974, two individuals, Anthony Sedita and James Lentini, met and made arrangements for the delivery of a number of the stolen television sets to Sedita's home on the next night (Tr. 87-90). Sedita was to sell most of the sets for Lentini and keep several as compensation (Tr. 126-127).

On the evening of January 30, 1974, three men in a large white van marked "Marcus Rental" arrived at Sedita's house (Tr. 90-91). One man, whom Sedita identified as petitioner, carried 46 of the stolen television sets inside (Tr. 100, 102, 106). At the time of the delivery, petitioner was renting an eighteen-foot van with a white cab and a red box from the Marcus Rental Company (Tr. 143, 155, 160). This was the only large white van rented by the company on the night of the delivery (Tr. 144-145).

Two days after the delivery, FBI agents visited Sedita's home to question him in regard to the stolen television sets (Tr. 222). During this visit, Sedita turned over to the agents the stolen television sets still in his possession (*ibid.*). The agents subsequently searched petitioner's home, pursuant to a search warrant (Tr. 225-226). In petitioner's bedroom the agents discovered a slip of paper on which six sets of numbers and letters were written (Tr. 226-227). These numbers matched the model numbers of the stolen television sets; adjacent to three of the model numbers were listed numbers that coincided with the quantities of those respective models that had been stolen from the railroad yard (Tr. 213-218). An address book containing the name and phone number of James Lentini, the individual who arranged for the delivery of the televisions to Sedita, was also seized during the search of petitioner's residence (Tr. 87-89, 239-241).

At trial, Anthony Sedita testified for the government and identified petitioner as the man who had carried the stolen television sets into his home (Tr. 100, 106). Prior to testifying, Sedita had entered into a plea bargain with the government, under the terms of which the charge against Sedita was reduced from a felony to a misdemeanor.

1. Petitioner contends (Pet. 7-15) that he was deprived of his right to attempt to impeach Sedita's credibility when the trial court limited his recross-examination of Sedita by refusing to permit Sedita to testify as to his knowledge of the difference in penalties between a felony and a misdemeanor (Tr. 135).

As the court of appeals noted (Pet. App. 20), however, "Sedita's motives for testifying, and the terms of his plea agreement were clearly brought out by the testimony" (Tr. 110-111, 119, 125, 128-131, 133-135, 137-139). In response to questioning as to his motive for making the agreement, Sedita stated that "[t]he misdemeanor charge is a much less charge than a felony" (Tr. 129). Sedita also stated that the difference in sentences had been explained to him by the government during plea negotiations (Tr. 135). Petitioner's counsel engaged in a full and searching cross-examination of Sedita (Tr. 101-127), and the partial limitation of the scope of recross-examination to exclude inquiry concerning difference in specific penalties between a misdemeanor and a felony was not an abuse of discretion by the trial court. See *United States* v. *Kahn*, 472 F.2d 272 (C.A. 2), certiorari denied, 411 U.S. 982.[2]

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[2]There is no conflict in the circuits as petitioner suggests. The cases cited by petitioner (Pet. 13) simply hold that the details of a plea bargain are an appropriate subject for cross-examination. That principle was followed in this case. Those decisions do not hold that the trial court must permit essentially cumulative recross-examination.

2. Petitioner also contests the sufficiency of the evidence (Pet. 15-17), arguing that Sedita's identification was contradicted by two defense witnesses. The evidence, which is summarized above, was sufficient, however, to support the conviction when viewed in the light most favorable to the government. See *Glasser* v. *United States*, 315 U.S. 60, 80. In addition to the eyewitness identification by Sedita, petitioner was linked to the crime both by his rental of the truck apparently used to transport the stolen television sets to Sedita and by the incriminating evidence that was seized in the course of the search of his residence.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JULY 1975.